

## Message Text

PAGE 01 STATE 041138

72

ORIGIN EB-07

INFO OCT-01 ARA-10 ISO-00 L-02 CAB-05 CIAE-00 COME-00

DODE-00 DOTE-00 INR-07 NSAE-00 FAA-00 /032 R

DRAFTED BY EB/AN:AJRIMAS:DAP

APPROVED BY EB/OA:MHSTYLES

ARA/EP - F. CORRY

----- 026669

P 241949Z FEB 75

FM SECSTATE WASHDC

TO AMEMBASSY LIMA PRIORITY

UNCLAS STATE 041138

E.O. 11652:N/A

TAGS: EAIR, PE

SUBJECT: US-PERU CIVIL AVIATION DISPUTE

1. CAB ADOPTED ORDER 75-2-88 (DOCKET 27539) ON FEBRUARY 21, 1975 CONCERNING CANCELLATION OF FOREIGN AIR CARRIER PERMIT OF AEROPERU. ORDER WAS SERVED FEBRUARY 24, 1975. TEXT AS FOLLOWS:

"STATEMENT OF TENTATIVE FINDINGS AND CONCLUSIONS AND ORDER TO SHOW CAUSE.

"AEROPERU (EMPRESA DE TRANSPORTES AERO DEL PERU) IS THE HOLDER OF A FOREIGN AIR CARRIER PERMIT, ISSUED PURSUANT TO ORDER 74-7-121, (FOOTNOTE 1) WHICH AUTHORIZES IT TO PERFORM FOREIGN AIR TRANSPORTATION WITH RESPECT TO PERSONS, PROPERTY, AND MAIL, OVER A ROUTE BETWEEN: (1) A POINT OR POINTS IN PERU; THE INTERMEDIATE POINTS GUAYAQUIL AND QUITO, ECUADOR; BOGOTA AND CALI, COLOMBIA; PANAMA CITY, PANAMA; CARACAS, VENEZUELA; AND MIAMI, FLORIDA; AND THE TERMINAL POINT MONTREAL, CANADA; AND (2) A POINT OR POINTS IN PERU; THE INTERMEDIATE POINTS GUAYAQUIL, ECUADOR; AND MEXICO CITY, UNCLASSIFIED

PAGE 02 STATE 041138

FOOTNOTE 1: APPROVED BY THE PRESIDENT ON JULY 25, 1974 (DOCKET 26600). END FOOTNOTE 1.

MEXICO; AND THE TERMINAL POINT LOS ANGELES, CALIFOR-

NIA; AND TO ENGAGE IN CHARTER TRIPS SUBJECT TO PART 212 OF THE BOARD'S ECONOMIC REGULATIONS. THIS PERMIT, ISSUED PURSUANT TO THE AIR TRANSPORT SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF PERU, ENABLES AEROPERU TO OPERATE TO THE UNITED STATES WITH WHATEVER NUMBER OF FREQUENCIES AND COMBINATION OF AUTHORIZED POINTS IT DESIRES, UTILIZING WHATEVER TYPE AIRCRAFT IT ALONE CHOOSES.

"THE GOVERNMENT OF PERU HAS ISSUED OPERATING PERMITS TO THE UNITED STATES-DESIGNATED CARRIER (BRANIFF AIRWAYS, INC.) AUTHORIZING SCHEDULED AIR SERVICES BETWEEN SPECIFIED POINTS IN THE UNITED STATES AND LIMA, VIA NAMED INTERMEDIATE POINTS AND BEYOND LIMA TO NAMED POINTS. FREQUENCIES, ITINERARIES AND EQUIPMENT ARE ALL SPECIFIED. SHOULD THE CARRIER WISH TO IMPLEMENT ANY CHANGES IN ITS OPERATIONS, IT MUST OBTAIN THE PRIOR APPROVAL OF THE AERONAUTICAL AUTHORITIES OF PERU.

"ON APRIL 3, 1974 THE GOVERNMENT OF PERU CANCELED THE US-DESIGNATED CARRIER'S OPERATING PERMIT, WHICH WAS DUE TO EXPIRE IN JUNE 1975, UNDER THE TERMS OF A DECREE WHICH PROVIDED FOR THE CANCELLATION OF ALL OPERATING PERMITS WHOSE TERMS HAD EXCEEDED THREE YEARS. BRANIFF WAS ADVISED BY THE PERUVIAN AUTHORITIES THAT RENEWAL OF ITS OPERATING PERMIT WOULD BE CONTINGENT UPON THE EXISTENCE OF REAL RECIPROCITY, DEFINED AS AN EQUIVALENCE IN THE NUMBER OF FREQUENCIES OPERATED BY THE US CARRIER AND AEROPERU OR, IN THE EVENT THIS SITUATION DID NOT EXIST, UPON THE US CARRIER PROVIDING EFFECTIVE COMPENSATION, EITHER IN THE FORM OF PAYMENTS OF 20 PERCENT OF ITS RECEIPTS ON CERTAIN SECTORS OR IN THE FORM OF TECHNICAL OR OTHER ASSISTANCE.

"IN MAY 1974 THE US-DESIGNATED CARRIER APPLIED TO THE AERONAUTICAL AUTHORITIES OF PERU FOR AUTHORITY TO OPERATE TWO ADDITIONAL FREQUENCIES TO THAT COUNTRY. WHEN THE GOVERN-

UNCLASSIFIED

PAGE 03 STATE 041138

MENT OF PERU INDICATED THAT IT WOULD NOT APPROVE THE US CARRIER'S APPLICATION, THE UNITED STATES GOVERNMENT NOTED ITS OBJECTIONS AND REQUESTED THE PERUVIAN AUTHORITIES TO RECONSIDER THEIR DECISION PENDING CONSULTATIONS. THE PERUVIAN AUTHORITIES DECLINED TO DO SO, IN CLEAR VIOLATION OF THE AIR TRANSPORT SERVICES AGREEMENT. (FOOTNOTE 2).

"FOOTNOTE 2: THE AIR TRANSPORT SERVICES AGREEMENT BETWEEN THE UNITED STATES AND PERU PROVIDES THAT:

"1) THE TWO GOVERNMENTS FIND THEMSELVES IN AGREEMENT THAT UNDER THE TERMS OF THE AIR TRANSPORT AGREEMENT THE RESPONSIBILITY FOR THE DETERMINATION OF THE APPROPRIATE

CAPACITY, FREQUENCY, AND TYPE OF AIRCRAFT USED OVER AGREED ROUTES, CONSONANT WITH THE TERMS OF THE AGREEMENT, RESTS IN THE FIRST INSTANCE WITH THE DESIGNATED AIRLINES. IN LIGHT OF THE REQUIREMENT OF PERUVIAN LEGISLATION WITH REGARD TO THE FILING OF SCHEDULES, IT IS AGREED THAT EACH GOVERNMENT MAY REQUIRE THE AIRLINES DESIGNATED BY THE OTHER GOVERNMENT TO SUBMIT SCHEDULES, FOR INFORMATION PURPOSES ONLY, THIRTY DAYS PRIOR TO THE PROPOSED ENTRY INTO EFFECT OF SUCH SCHEDULES.

"2) NEITHER GOVERNMENT WILL DELAY NOR DENY THE ENTRY INTO EFFECT OF PROPOSED SCHEDULES." END FOOTNOTE 2.

"ON OCTOBER 22, 1974 THE GOVERNMENT OF PERU ISSUED THE US CARRIER A NEW OPERATING PERMIT WITH AN EXPIRATION DATE OF FEBRUARY 28, 1975. THE PERMIT REDUCED THE NUMBER OF FLIGHTS PERMITTED THE US CARRIER BETWEEN THE UNITED STATES AND PERU AND BEYOND AND REQUIRED THE CARRIER TO ADHERE TO A PRESCRIBED ITINERARY ON THOSE FLIGHTS WHICH IT COULD CONTINUE TO OPERATE. FURTHER RESTRICTIONS WERE PLACED ON THE NUMBER OF FLIGHTS THAT THE CARRIER MIGHT OPERATE TO INDIVIDUAL POINTS ALONG THE ROUTE. THE US CARRIER'S SERVICES BETWEEN LIMA, LA PAZ AND ASUNCION; LIMA, LA PAZ AND BUENOS AIRES; LIMA, LA PAZ AND SANTIAGO AND BETWEEN LIMA, SAO PAULO AND RIO DE JANEIRO WERE AUTHORIZED PROVISIONALLY FOR A PERIOD OF 45 DAYS, ON THE GROUNDS THAT THEY WERE NOT CONTEMPLATED IN THE ROUTE ANNEX OF THE UNCLASSIFIED

PAGE 04 STATE 041138

US-PERU AIR TRANSPORT SERVICES AGREEMENT, THUS FURTHER REDUCING THE US CARRIER'S OPERATION BEYOND PERU TO ONE FLIGHT PER WEEK. THE US CARRIER WAS GIVEN 45 DAYS, OR UNTIL JANUARY 7, 1975, TO COMPLY WITH THE TERMS OF THE NEW PERMIT. SUBSEQUENTLY, THIS PERIOD WAS EXTENDED TO JANUARY 31, 1975.

"REPRESENTATIVES OF THE GOVERNMENT OF PERU AND THE GOVERNMENT OF THE UNITED STATES MET FOR CONSULTATIONS IN LIMA NOVEMBER 11-15, 1974, AND JANUARY 8-24, 1975. DURING THE TALKS THE US REPRESENTATIVES MADE CLEAR THE UNITED STATES GOVERNMENT'S VIEW THAT THE RESTRICTIONS OF THE GOVERNMENT OF PERU HAD UNILATERALLY IMPOSED ON THE US CARRIER CONSTITUTED A VIOLATION OF THE AGREEMENT. THEY URGED THAT THE TWO DELEGATIONS EXPLORE BILATERAL SOLUTIONS TO THE CIVIL AVIATION PROBLEMS BETWEEN THE TWO COUNTRIES. THESE TALKS WERE UNSUCCESSFUL. INTER-CARRIER DISCUSSIONS WERE SIMILARLY UNPRODUCTIVE. BEGINNING FEBRUARY 1, 1975 THE US-DESIGNATED CARRIER CONDUCTED ITS REDUCED OPERATIONS PURSUANT TO THE TERMS OF ITS NEW PERMIT.

SERVICES WERE CONTINUED IN ORDER TO MINIMIZE THE IMPACT UPON THE TRAVELING PUBLIC OF CURTAILED SERVICES AND DID

NOT CONSTITUTE ACCEPTANCE BY THE UNITED STATES OF THE ACTIONS TAKEN BY THE GOVERNMENT OF PERU.

"THE US-PERU AIR TRANSPORT SERVICES AGREEMENT GRANTS THE US CARRIER RIGHTS TO FREELY OPERATE SERVICES BEYOND PERU. IN THE ROUTE DEFINITION "AND BEYOND PERU TO POIN IN CHILE AND BOLIVIA OR BEYOND," CHILE AND BOLIVIA ARE NAMED TO PROVIDE AN INDICATION OF THE DIRECTION IN WHICH THE BEYOND TRAFFIC MIGHT FLOW. THE LISTING OF THESE TWO COUNTRIES DOES NOT IMPOSE THE REQUIREMENT THAT THEY BE SERVED, IN THE ORDER LISTED, NOR DOES IT IMPLY THAT ONLY CHILE AND/OR BOLIVIA MAY BE SERVED ON ANY FLIGHT BEYOND PERU. SINCE IT IS NOT MANDATORY TO SERVE POINTS IN CHILE OR BOLIVIA, FLIGHTS MAY SERVE POINTS BEYOND CHILE OR BOLIVIA.

"UPON CONSIDERATION OF THESE MATTERS, THE BOARD FINDS THAT THE GOVERNMENT OF PERU HAS TAKEN UNILATERAL RESTRICTIVE UNCLASSIFIED

PAGE 05 STATE 041138

ACTION AGAINST THEUS-DESIGNATED CARRIER'S OPERATIONS, OVER THE OBJECTION OF THE UNITED STATES GOVERNMENT, WHICH HAS SIGNIFICANTLY IMPAIRED, LIMITED AND DENIED OPERATING RIGHT IN A MANNER INCONSISTENT WITH AND IN VIOLATION OF THE UNITED STATES-PERU AIR TRANSPORT SERVICES AGREEMENT. THE UNDERLYING FOUNDATION FOR THE GRANT OF A FOREIGN AIR CARRIER PERMIT TO AEROPERU RESTS UPON THE FAITHFUL ADHERENCE TO THE TERMS OF THE UNITED STATES-PERU AIR TRANSPORT SERVICES AGREEMENT, I.E., THE GRANT TO US CARRIERS OF THE RIGHTS EXCHANGED AND PROVIDED FOR IN THAT AGREEMENT. SINCE PERU HAS DENIED THESE RIGHTS TO THE US CARRIER DESIGNATED UNDER THE AGREEMENT, BRANIFF AIRWAYS, THE BOARD FINDS THAT THE FOUNDATION FOR THE GRANT OF A PERMIT TO AEROPERU NO LONGER EXISTS. ACCORDINGLY, THE BOARD TENTATIVELY FINDS THAT CANCELLATION OF THE FOREIGN AIR CARRIER PERMIT HELD BY AEROPERU WOULD BE IN THE PUBLIC INTEREST.

"ACCORDINGLY, IT IS ORDERED THAT:

"1. ALL INTERESTED PERSONS ARE HEREBY DIRECTED TO SHOW CAUSE WHY THE BOARD SHOULD NOT ISSUE AN ORDER MAKING FINAL THE TENTATIVE FINDINGS AND CONCLUSIONS STATED HEREIN, AND WHICH WOULD, SUBJECT TO THE APPROVAL OF THE PRESIDENT, CANCEL THE FOREIGN AIR CARRIER PERMIT HELD BY AEROPERU (EMPRESA DE TRANSPORTES AERO DEL PERU) (ORDER 74-7-212);

"2. ANY INTERESTED PERSON HAVING OBJECTION TO THE ISSUANCE, WITHOUT HEARING, OF AN ORDER MAKING FINAL THE TENTATIVE FINDINGS AND CONCLUSIONS STATED HEREIN SHALL FILE A STATEMENT OF OBJECTIONS SUPPORTED BY EVIDENCE WITHIN 20 DAYS OF SERVICE OF THIS ORDER. IF AN EVIDENTIA-

RY HEARING IS REQUESTED, THE OBJECTOR SHOULD STATE IN  
DETAIL WHY SUCH HEARING IS CONSIDERED NECESSARY AND WHAT  
RELEVANT AND MATERIAL FACTS HE WOULD EXPECT TO ESTABLISH  
THROUGH SUCH HEARING WHICH CANNOT BE ESTABLISHED IN  
WRITTEN PLEADINGS;

"3. IF TIMELY AND PROPERLY SUPPORTED OBJECTIONS ARE  
FILED, FURTHER CONSIDERATION WILL BE ACCORDED THE  
MATTERS AND ISSUES RAISED BY THE OBJECTIONS BEFORE FURTHER  
UNCLASSIFIED

PAGE 06 STATE 041138

ACTION IS TAKEN BY THE BOARD; PROVIDED, THAT THE BOARD  
MAY PROCEED TO ENTER AN ORDER IN ACCORDANCE WITH THE TEN-  
TATIVE FINDINGS AND CONCLUSIONS HEREIN IF IT DETERMINES  
THAT THERE ARE NO FACTUAL ISSUES PRESENTED THAT WARRANT  
THE HOLDING OF AN EVIDENTIARY HEARING;

"4. IN THE EVENT NO OBJECTIONS ARE FILED, ALL FURTHER PRO  
CEDURAL STEPS WILL BE DEEMED TO HAVE BEEN WAIVED, AND  
THE BOARD MAY PROCEED TO ENTER AN ORDER IN ACCORDANCE WITH  
THE TENTATIVE FINDINGS AND CONCLUSIONS SET FORTH HEREIN;  
AND

"5. COPIES OF THIS ORDER SHALL BE SERVED UPON AEROPERU  
AND THE AMBASSADOR OF PERU IN WASHINGTON, D.C.

"THIS ORDER WILL BE PUBLISHED IN THE FEDERAL REGISTER,  
AND WILL BE TRANSMITTED TO THE PRESIDENT.

"BY THE CIVIL AERONAUTICS BOARD:

"PHYLLIS T. KAYLOR, ACTING SECRETARY." KISSINGER

UNCLASSIFIED

<< END OF DOCUMENT >>

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 26 AUG 1999  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** CIVIL AVIATION, DISPUTES, AIR ROUTE APPLICATIONS, AIRLINES  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 24 FEB 1975  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** n/a  
**Disposition Approved on Date:**  
**Disposition Authority:** n/a  
**Disposition Case Number:** n/a  
**Disposition Comment:**  
**Disposition Date:** 01 JAN 1960  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1975STATE041138  
**Document Source:** ADS  
**Document Unique ID:** 00  
**Drafter:** EB/AN:AJRIMAS:DAP  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** n/a  
**Film Number:** D750065-0104  
**From:** STATE  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1975/newtext/t19750287/baaaagsf.tel  
**Line Count:** 253  
**Locator:** TEXT ON-LINE, TEXT ON MICROFILM  
**Office:** ORIGIN EB  
**Original Classification:** UNCLASSIFIED  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 5  
**Previous Channel Indicators:**  
**Previous Classification:** n/a  
**Previous Handling Restrictions:** n/a  
**Reference:** n/a  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** ElyME  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 14 MAY 2003  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <14 MAY 2003 by RuthemTJ>; APPROVED <14 JAN 2004 by ElyME>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
05 JUL 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** n/a  
**TAGS:** EAIR, PE, US, CAB, AEROPERU  
**To:** LIMA  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006